Supreme Court, U.S.
FILED
JAN 6 - 2010
OFFICE OF THE CLERK

No. 09-824

In The

Supreme Court of the United States

Craig Smallwood,
Petitioner

v.

City and County of Honolulu,

and

Haseko (Ewa) Inc.
Respondents

On Petition For Writ Of Certiorari

To The Intermediate Court Of Appeal

State Of Hawaii

PETITION FOR WRIT OF CERTIORARI

Craig Smallwood
Petitioner Pro Se
91-623 Papipi Rd
Ewa Beach, HI 96706
(808) 689-6747

Questions Presented For Review

1) Was the Petitioner's basic and most fundamental right of due process denied in an environmental case of epic proportion with devastating consequences some of which are global in nature?

2) Did the Hawaii State Judiciary system fail the Petitioner in granting the Petitioner his day in court?

3) Did the Hawaii Supreme Court and the Hawaii Appellate Court err with a decision, through no fault of the Petitioner, allowing deliberate court negligence to create an untimely appeal and no jurisdiction?

4) Did the Hawaii Circuit Court judge use clear legal error, prejudicial decisions, abuse of judicial power, deliberate delay and court negligence to deny jurisdiction even after this case was remand back to the court by the Intermediate Court of Appeals to deny Petitioner his due process?

LIST OF PARTIES (ii)

[X] All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the trial court and the Appellate Court for their judgments of dismissals.

OPINIONS BELOW

The opinion/judgment of the highest state court not to review the merits appears at Appendix A to the petition and is unpublished.

The opinion/judgment of the Appellate court appears at Appendix B to the petition and is unpublished.

The opinion/judgment of the trial court appears at Appendix D to the petition and is unpublished.

The date on which the highest state court decided my case was October 9, 2009, and a copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. 1258(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVE

1) The 5th and 14th Amendments giving the right of due process.

2) NEPA (National Environmental Policy Act).

3) APA (Administrative Procedure Act).

4) The 4th Amendment giving the right against unreasonable seizures.

This is a case where the Petitioner discovered that environmental laws were blatantly being violated and overlooked with certain dire consequences. Petitioner filed a complaint and a motion for an order of protection on the grounds that State and Federal laws were clearly being disregarded with an inevitable outcome of death and destruction locally, regionally, and in some instances these conclusions are of a global nature. Petitioner clearly cited some environmental statutes that were being illegally violated and some of the obvious dangers to include possible extinction of an endangered species (specifically, the Hawaiian monk seal) and its critical habitat. Pollution and contamination of two known food sources, one of which of which is exported globally. The building of

shoreline construction and up to a 20ft grade change using dredge and fill materials running parallel to the ocean, redirecting an inevitable tsunami into an existing community. Lastly, the destruction of an ecosystem and of coral reefs, thereby changing the currents, and contributing the warming of waters which might eventually exponentially contribute to the melting of polar ice caps, worldwide increasing levels of sea levels, and increasing the problem of global warming.

All that the Petitioner ever requested was his chance to present overwhelming scientific evidence and a number of previously qualified world renowned experts to provide testimony in a court of law to substantiate his factual local and regional environmental damage claims and the Petitioner's conclusion of global changing theories.

This simple but most fundamental tenet of the American judicial system that of due process has been perverted and denied by the Hawaii judicial system. For close to ten years the Petitioner has applied to the court for a hearing that has never been granted, in spite of a remand from the ICA (Intermediate Court of Appeals).

The stakes are that of billions of dollars of construction and development, including a regional flood control plan into the Pacific Ocean, vs. the application of federal and state environmental laws enacted for the good of mankind and to protect the Petitioner and his community along with future generations from this specific type of project which places dollars and development at the cost of the destruction and tampering with Mother Nature whose visible effect will be felt for centuries to come.

In the beginning this was a simple environmental case consisting of whether or not an EIS (environmental impact statement) had been triggered and if a supplemental EIS was required by Hawaii statutes. Unfortunately, the Petitioner came across a judge who had prejudicially decided this case would not be heard.

Even after remand, the judge chose to not accept jurisdiction repeatedly citing insufficiency of the complaint, when in fact the complaint was more than legally sufficient and such a ruling had no legal grounds. The judge also granted motions that were clearly untimely even though the Petitioner had requested that they be stricken from the record.

Worst of all, when the judge dismissed the complaint for the third time, the Petitioner requested

that the dismissed complaint be voluntarily withdrawn as not to have a jurisdictional conflicts with the federal court. The judge accepted the voluntary withdrawal, and then banned the State case and State law issues from ever being presented in State court. Although this case was never heard in State court, in other words, Petitioner was denied his first bite at the apple. As if these jurisdictional shenanigans were not despicable enough, the Court purposely delayed issuing final orders and a final judgment creating a second appeal impossible, as the first appeal resulted in remand.

The court records are quite clear on the above issues and orders, including motion in opposition to the dismissal of the complaint for insufficiency and an order to supplement the record of appeal granted for deliberate court negligence. Unfortunately, the

order granting supplementing of the record of decision with a final judgment and the admission of deliberate court negligence was also delayed and came after the dismissal of the appeal as untimely, and then the State Supreme Court used its judicial discretion not to review the case.

In conclusion, the court would be proper and justice would be served with an order demanding that all construction done on the Ewa plain in accordance with grading compliant to the regional drainage plan, exiting into Kaloi Gulch then to flood into the Pacific Ocean, be removed and the land be returned back to its natural state as it was in 2004. However, Petitioner is merely requesting that the court order further construction to cease and that this case be remanded to the Supreme Court of Hawaii for injunctive relief to determine what

mitigation measures might be necessary at this point, with the exception that all placed fill and dredge materials be immediately removed from the shoreline to a safe arbitrary distance of one mile inland to avoid further pollution from rain run-off and leeching.

REASONS FOR GRANTING THE PETITION

This petition should be granted not only because of the despicable attempt to deny Petitioner due process because of his economic status and inability to afford legal representation. Additionally, because this case also involves clear violations of NEPA by allowing unknown amounts of pollution, pesticides, and fill materials to enter and destroy

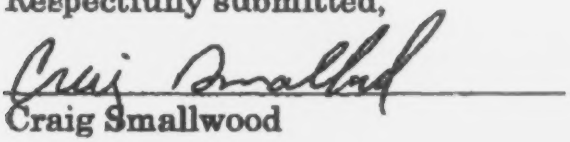
portions of U.S. territorial waters (namely that the Pacific Ocean), along with the purposeful avoidance of completing legally and triggered EIS's by using false, misleading, and limited scope EIS's, EA's, and SEIS's, violating the Administrative Procedure Act, by not taking into account the scope of the entire project.

These violations will create certain and inevitable damage, some planetary in its effects, some local, such as the destruction of an existing community by redirecting the force of a tsunami, which violates the 4th Amendment by effectively unreasonable seizing of property.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,



Craig Smallwood

Date: January 5, 2010

CERTIFICATE OF COMPLIANCE

CRAIG SMALLWOOD,

Petitioner

v.

CITY AND COUNTY OF HONOLULU and

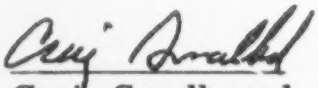
HASEKO (EWA) INC.,

Respondents

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 1154 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 5, 2010



Craig Smallwood

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

CRAIG SMALLWOOD – PETITIONER

VS.

CITY AND COUNTY OF HONOLULU

and

HASEKO (EWA) INC. – RESPONDENTS

PROOF OF SERVICE

I, Craig Smallwood, do swear or declare that on this date, January 6, 2010, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by hand delivery to each of them.

The name and addresses of those served are as follows:

City and County of Honolulu

Don S. Kitaoka (Department of the Corporation Counsel)

City and County of Honolulu

Honolulu, HI 96813

Morihara Lau & Fong LLP (Attorneys for Haseko (Ewa) Inc.)

Paul H. Sato

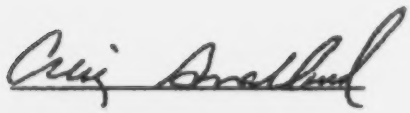
400 Davies Pacific Center

841 Bishop St

Honolulu, HI 96813

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2010



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